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TECHNOLOGY CENTER 2100

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In re Application of: Lunecki, et al.

Application No. 10/625,580

Attorney Docket No. CYGL-26,370

Filed: July 23, 2003

For: USB INTEGRATED MODULE

)  
 ) SUA SPONTE  
 ) WITHDRAWAL OF HOLDING OF  
 ) ABANDONMENT *under 37 CFR § 1.181*  
 )  
 )

The petition under 37 CFR 1.181 for withdrawal of the holding of abandonment, filed January 11, 2008, is acknowledged.

A review of the application reveals that a Notice of Abandonment was mailed to the Applicant on January 9, 2008. The notice incorrectly indicated that the instant application was being held abandoned for failure to timely file a proper reply to the Final rejection mailed on March 7, 2007. In actuality, the Final Office action, mailed on March 7, 2007, began a six-month statutory period for reply. Applicant timely filed a Notice of Appeal along with a request for extension of time for one (1) month on July 9, 2007, currently located in the file. Note, the fee for the one month extension of time was charged on July 10, 2007.

The time period for filing an Appeal Brief after Notice of Appeal is set forth in 37 CFR § 41.37:

(a) (1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

In accordance with 37 CFR § 1.136 - Extensions of time:

(a) (1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute **or five months** after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed.

37 CFR 1.136 provides for two distinct procedures to extend the period for action or reply in particular situations. The procedure which is available for use in a particular situation will depend upon the circumstances. 37 CFR 1.136(a) permits an applicant to file a petition for extension of time and a fee as set forth in 37 CFR 1.17(a) **up to 5 months** after the end of the time period set to take action except:

(A) where prohibited by statute,  
(B) where prohibited by one of the items listed in the rule, or  
(C) where applicant has been notified otherwise in an Office action.

The Notice of Appeal, filed July 9, 2007, started the two-month period for response. Since the shortened time period for filing an Appeal Brief after the filing of a Notice of Appeal is not established by statute, the filing of a Reply Brief on or before February 9, 2008 (along with the appropriate extension of time under 37 CFR §1.136), would in fact be considered to be timely filed.

In view of these facts, the abandonment of the application at this time was clearly in error and has been VACATED. The Office regrets any inconvenience this may have caused.

The application is being forwarded to the Technology Support Staff with instructions to **WITHDRAW** the holding of abandonment. If the brief is not filed within the time designated by 37 CFR § 41.37, the applicant will be notified that the appeal stands dismissed.

Inquiries to this decision may be directed to Special Programs Examiner Brian Johnson at (571) 272-3595.



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